LIBRARY,
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 29 1962
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 444.

THE UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF THE ROBERTSON LUMBER COMPANY, a Corporation,
Petitioner,

vs.

CONTINENTAL CASUALTY COMPANY, a Corporation,
Respondent.

BRIEF IN RESISTANCE TO GRANTING THE WRIT

To the United States Court of Appeals for the Eighth Circuit.

THOMAS L. DEGNAN,
JAMES L. LAMB,
201 Red River National Bank Building,
Grand Forks, North Dakota,
Counsel for Respondents.

HAROLD D. SHAFT,
PAUL BENSON,
JOHN G. SHAFT,
310 Security Building,
Grand Forks, North Dakota,
Counsel for Petitioner.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

Page

There Is No Conflict on the Question Involved Between the Circuits 2-3

The Demise of Capehart Construction 3

Conclusion 3

Table of Cases.

Lasley v. The United States for the use of C. C. Westerman, Fifth Circuit, 285 Fed. 2d 98 2

Miles Lumber Company et al. v. Harrison and Grimshaw Construction Co. et al., Tenth Circuit, 305 Fed. 2d 363 2

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 444.

THE UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF THE ROBERTSON LUMBER COMPANY, a Corporation,
Petitioner,

vs.

CONTINENTAL CASUALTY COMPANY, a Corporation,
Respondent.

BRIEF IN RESISTANCE TO GRANTING THE WRIT

To the United States Court of Appeals for the Eighth Circuit.

The principal question involved here is whether or not a supplier or material man has the right of recovery against a surety on a bond required under a so-called Capehart Act construction contract, where the material men or persons furnishing labor failed to comply with the terms of the bond. This writ to review this question, which has now been answered in the negative in both the Eighth and Tenth Circuits, is being resisted on two principal grounds.

THERE IS NO CONFLICT ON THE QUESTION INVOLVED BETWEEN THE CIRCUITS.

In the instant case the Circuit Court, in a very able and well-reasoned decision by Judge Hunley, fully explored all of the specific problems surrounding the general question, which was before the Court. It examined the cases that were cited which bore on the issue in any manner. As a result of this full, complete and very thorough examination the Circuit Court felt that there was no case precisely in point on the question involved. As to the case of Lasley v. The United States for the use of C. C. Westerman, Fifth Circuit, 285 Fed. 2d 98, which is the case principally relied upon by counsel for the petitioner as the case conflicting with the instant case the Circuit Court held that this case did not involve the validity of the notice provisions of the bond, and it was distinguishable from the instant case on the factual question involved. At the same time the Eighth Circuit was determining its position in regard to the question, the Tenth Circuit in the case of U. S. A. for the use and benefit of Miles Lumber Company et al. v. Harrison and Grimshaw Construction Co., et al., Tenth Circuit, 305 Fed. 2d 363, was arriving at exactly the same conclusion that the Eighth Circuit did. Therefore it seems that the three Circuit Courts which have had anything involving a Capehart bond problem before them have not really been in conflict. The two, Eighth and Tenth Circuit Courts, have after thoroughly going over the problem, determined that the Capehart bond requirements must be fulfilled before a claimant would have cause of action against the surety. The Fifth Circuit decision in the Lasley case, supra, merely held that the Federal Court would have jurisdiction on the question. Therefore it seems that on this particular question two Circuit Courts have very ably decided in conformity with each other and without apparently any idea that the other

was deciding the same question, both came to the same conclusion on the same question. The Fifth Circuit did not have this question before it and on the question that was presented before it there is no conflict between the Circuits.

THE DEMISE OF CAPEHART CONSTRUCTION.

Triggered primarily by the colossal default of Hal B. Hayes, which default was responsible for the instant case, the United States Senate held extensive hearings on the Capehart Law, and as a result thereof the Congress has apparently concluded that the Capehart type of construction with the elaborate and artificial mechanism created for financing this construction is so complicated, and is of such questionable value to the Government and public interests, that it refused to authorize any further Capehart construction, and has actually authorized direct appropriated funds for continued Government construction of housing on military installations. For this reason it is felt that the problems involved here are so unique that there is little likelihood that there will be any reoccurrence of same.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should not be granted.

Respectfully submitted,

THOMAS L. DEGNAN,

JAMES L. LAMB,
201 Red River National Bank Building,
Grand Forks, North Dakota,
Counsel for Respondents.